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SUBJECT: WHALES: GOA CONSIDERING OPTIONS, NO PRECIPITATE
ACTION SEEN

Classified By: CHARGE DANIEL A. CLUNE, REASONS 1.4 B and D

11. (C/NF) Summary: Japanese whaling has been a major public issue in Australia over the past three days, with considerable media coverage of the January 15 detention of two Sea Shepherd Conservation Organization activists on a Japanese whaling vessel they had boarded. The media also highlighted a January 15 Australian Federal Court ruling prohibiting whaling in Australian waters, though also reporting that the decision is unlikely to have an impact because Japan does not recognize Australia's Antarctic claims. Contacts tell us that the Rudd Government is trying to walk a fine line between responding to public sentiment about whaling (and living up to its own campaign promises to take a tougher line on the issue) and not undermining Australia's relations with Japan or its Antarctic interests. Australians are debating international legal action, though one contact noted that Canberra was surprised at the strength of U.S. concern about the possible consequences of such a step. Foreign Minister Smith is likely to raise the issue with the Secretary, if only because of the domestic pressure to show that the Rudd Government is fully engaged on the issue. End Summary.

12. (SBU) The Australian press has been dominated by news about the latest in Australia's clash with Japan on Japanese "research" whaling. On January 15, an Australian Federal Court found Japanese whaling in the Australian Whale Sanctuary in the Antarctic to violate the Environment Protection and Biodiversity Conservation Act. Although this may add to the pressure on the GOA to take further action, Department of Foreign Affairs Director for Environment Strategies David Dutton told Embassy that the GOA did not plan to go beyond its current commitment to monitor Japanese whaling.

13. (SBU) Dutton noted that the GOA would not attempt to enforce the court ruling on the high seas, because of the Antarctic Treaty. And since Kyodo Senpaku Kaisha (the Japanese whaling company) has no assets in Australia, there is no practical way to enforce the ruling. DFAT Japan Section Director Warren King told us that the Japanese appear to have expected the ruling after the Rudd Government reversed former PM Howard's policy of asking the Court not to hear the case.

14. (C) Noting that the Japanese have not raised whaling in official channels in the past few weeks, King said that the Japanese officials who deal with Australia understand the strength of public sentiment on the issue but appear surprised at the poor reception of their argument that the hunt is for "scientific" purposes. Japanese officials do not appear to understand the depth of feeling within Australia against whaling and the utter rejection of the idea that there is a scientific basis to the Japanese hunt. Commenting that domestic Japanese support for whaling has been declining, King said Australia is trying to highlight the declining, King said Australia is trying to highlight the cost to Japan while trying to avoid taking actions that would strengthen domestic support for whaling in Japan on nationalistic grounds. Referring to a January 15 meeting between Australian Embassy officials and OES Assistant Secretary McMurray, King said that the Australians have been

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"surprised" at the strength of the U.S. concerns.

15. (SBU) The January 15 detention of two Sea Shepherd Conservation Organization activists (including an Australian) on the whaling vessel Yushin Maru No. 2 has caused some concern in the GOA, which knew little more than what has appeared in the press concerning their treatment or the circumstances in which they boarded the whaler. The GOA and GOJ were in steady contact in Tokyo, Dutton said, and noted that the Sea Shepherd ship "seemed to be making itself unavailable," since prolonging their detention would bring further publicity to their cause. Disk jockeys at the

national youth-oriented music station Triple-J succeeded in interviewing Paul Watson, the captain of the Sea Shepherd ship "Steve Irwin", by telephone on both Tuesday and Wednesday, probably confirming Dutton's supposition that they were ducking the GOA's contact efforts. (At the moment, media reports that the Japanese say the Netherlands-flagged Sea Shepherd ship "Steve Irwin" is avoiding its attempts to hand over the two activists.) King said the Japanese Ministry of Foreign Affairs and the Japanese Fisheries Agency had been very responsive when contacted by the Australians about the two activists, agreeing to release them immediately and emphasizing that they are being treated well (in contrast to Sea Shepherd claims that the two were tied up on the ship's deck for several hours), while stressing the danger of their conduct. GOA officials fully understand that boarding a ship at sea is a dangerous act, with King noting that Greenpeace (which also has a ship shadowing the Japanese whaling fleet) has been critical of the boarding. Though the Sea Shepherd vessel did not respond to initial attempts by the Japanese to establish contact to arrange return of the two, King said that the two sides were now trying to work out arrangements for their return. The Japanese were hurting themselves by trying to insist on "preconditions" for the return, specifically that the Sea Shepherd group agree not to interfere with the rest of the hunt or film the return, according to King, who said that the Australians are urging their Japanese counterparts to abandon such conditions in order to return the two as quickly as possible. Dutton said Tokyo had been urging the GOA to "make them behave," but Dutton noted the "Steve Irwin" is a Dutch-flagged vessel in international waters, so Australia has no jurisdiction over it.

Next?

15. (C) Dutton said the next few weeks would be unpredictable. The Australian customs enforcement vessel "Oceanic Viking" arrived in the area today and has the Japanese whaling fleet in view. Its mandate is to monitor whaling, but Dutton said it looks like it will monitor protests as well, since both Greenpeace and Sea Shepherd have vessels chasing the Japanese whalers. King said that the decision to send a Customs vessel rather than Labor's campaign rhetoric of sending "the

Navy" reflected a recognition once in Government that a warship would be seen as very provocative by the Japanese.

16. (C) Former Environment Minister Malcolm Turnbull, in an unrelated meeting, told econoff yesterday that this "proves" that the Howard Government had struck the right balance on whaling. Turnbull said that the action to monitor the Japanese whalers had created expectations among the anti-whaling community that Australia would do more, and perhaps encouraged this kind of action. (Sea Shepherd and Greenpeace both planned and announced their harassment mission before the November election and change of government before the November election and change of government.)

17. (C) More broadly, there is pressure on the Rudd Government to "do more," but neither Dutton, King nor aide to Environment Minister Garrett Kate Pasterfield anticipated any change in current Australian policy to monitor the whaling - a policy that already goes beyond what the previous government did. The GOA is strictly in a reactive mode at the moment and is calling for restraint, but is also investigating options such as taking action in the International Court of Justice (ICJ). King told us that while no decision has been made, the very serious study of possible action either at the ICJ or possibly the Law of the Sea Tribunal reflects the fact that there is a lot of support within the Labor Party for stronger steps. In addition to the commitment to name a special envoy on whaling, King said that the issue would be raised by both Trade Minister Simon Crean (who will be in Japan January 20-24) and Foreign Minister Stephen Smith, scheduled to be in Tokyo January 31 after his Washington DC trip. Dutton added that the GOA is considering naming a special envoy on whaling. Dutton also expressed interest in knowing what the U.S. hoped to get out of an intersessional meeting on the IWC - particularly since whaling will be discussed at a Cabinet meeting on Monday January 21.

18. (C/NF) Comment: The Rudd Government's handling of the whaling issue highlights the difficulties in making the transition from opposition to government. After having criticized PM Howard for doing too little to stop Japanese whaling, the Labor Party has tried to strike a balance between doing more and not harming the relationship with Japan or undermining Australia's Antarctic claims. Labor went from calling for the Australian Navy to "block" the hunt before last fall's election campaign to having the Navy "monitor" the hunt (Labor's position during the campaign) to sending an Australian Customs vessel to monitor the Japanese whalers. Having raised public expectations that Australia can do more to block whaling, the Rudd Government finds itself under pressure to deliver but without causing any harm to relations with Japan. Trying to square this circle increases the chance that Australia will take international legal action, either at the ICJ (which our contacts say would be the most provocative, but might offer the best chance of a victory) or at the Law of the Sea Tribunal. Our Australian contacts acknowledge that such action would be unlikely to stop the whale hunt entirely, but could well force modifications that would make it more difficult for the Japanese. Equally importantly, such action would probably take a long time, removing some of the pressure on the Government for the next few years. FM Smith will almost certainly raise the issue when he sees Secretary Rice on January 28, if only to be able to tell the public that he did so. End Comment.

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